

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 23 OF 2006

M/S. SHAKTI ENTERPRISES AND ANR., ...Petitioners

Versus

SHRI ANTHONY PEREIRA AND ANR., ...Respondents

Mr. Arun Bras De Sa, Advocate for the Petitioners.
Mr. Aldrin Monteiro, Advocate for Respondent no.1.

Coram:- N. A. BRITTO, J.

Date:- 21st July, 2006

P.C.

Heard Shri Arun Bras De Sa, the learned Counsel on behalf of the petitioners/accused and Shri Monteiro, the learned Counsel on behalf of Respondent no.1/Complainant.

2. The Complainant prosecuted the accused under Section 138 of the Negotiable Instruments Act, 1881, ('Act' for short), on the allegation that the cheque for a sum of Rs.1,00,000/- dated 15.12.00, issued by the Complainant, had bounced and the Complainant having issued the statutory notice, the accused had failed to comply with the same.

3. The learned Trial Court accepted the case of the Complainant and convicted and sentenced the accused under Section 138 of the Act. The accused has been directed to pay compensation to the Complainant in the sum of Rs.1,50,000/- and in default, to undergo S.I. for a period of one month. The accused carried an appeal to the Court of Sessions but the said appeal came to be dismissed by the learned Adhoc Additional Sessions Judge, Panaji, vide his Order dated 29.03.2006.

4. The accused therefore, is now before this Court in revision

assailing findings of both the Courts below. Two submissions have been made on behalf of the accused by Shri Arun Bras De Sa. First is, that the cheque was not a legally valid cheque as it bore the date 15.12.1900. The second submission made is that the Complainant did not aver in the complaint that the accused had replied to the notice and since this fact was suppressed, the accused should not be convicted. As far as the first submission is concerned, the same has been dealt with by the Appellate Court in Para 17 of the Judgment. The learned first Appellate Court has observed that a minute perusal of the cheque reveals that the figure 19 of the year is printed on the said cheque and the handwritten date is 15/12-00. The printed figure 19 appears between numbers 12 and 00. It is obvious that the first two numbers of the year i.e. 19, were printed prior to the beginning of the year 2000. It cannot be disputed that this printing was done only to facilitate the customers by the bank. It is also a known practice that normally the year is written by writing the last two numbers of the year, the same practice has been followed in this cheque by writing the date as 15/12/00. The Court cannot shut its eyes on the practice which is prevailing all over and hold that the cheque is dated for the year 1900. Another fact that supports the said conclusion is that the endorsement is made by the Bank in returning the cheque. There are various reasons printed on the cheque return memo. This cheque has been returned for reason no.6, "payment stopped by drawer". Reason 11(c) is "out of date". If the banker was to take the date as 1900, the Bank would have returned it for the reason 11 (c) but the cheque was not returned for that reason and, therefore, there is every reason for the Court to presume that if the payment of the cheque was not stopped by the accused, the Bank would not have dishonoured the same on the ground that it is "out of date". The contention of the accused that the cheque is a stale cheque was therefore without any merits.

5. It is common knowledge that the cheques which were printed by most of the banks before the turn of this century carried the figure 19 and most of the people with the turn of the century either added 00 by writing the date and the month of the year. The Bank rightly understood this

practice and did not find that the date which was written on the cheque was 15.12.1900 but it was 15.12.2000. I am in complete agreement with what has been stated by the learned Appellate Court in Para 17 of the Judgment. The matter also could be looked at differently. The Complainant categorically stated that the accused had given to the Complainant the said cheque which was dated 15.12.2000. It was not the case of the accused that the said cheque was dated 15.12.1900. Once the Complainant asserted that the accused had given the cheque dated 15.12.2000, the said date carried presumption in terms of Section 18 of the Act, that the cheque was drawn or made on that date. The said presumption could have been rebutted by the accused by giving his own evidence which the accused did not do. In this view of the matter also, the contention of the accused that the cheque was dated 15.12.1900, had to be rejected.

6. As far as the second submission is concerned, the Complainant in Para 11 of the complaint had clearly stated that the notice of dishonour and demand dated 03.02.2001 was duly received and acknowledged by the accused on 05.02.2001. The Complainant had further stated that the accused had failed to pay the sum within 15 days from the receipt of the notice i.e. 20.02.2001. It appears that in the cross examination, the Complainant did acknowledge that the accused had sent a reply. However, the accused himself did not make any effort to produce the said reply in the cross examination of the Complainant in case the same was of any relevance to the case of the Complainant. The basic requirements of Section 138 were set out by the Complainant in his complaint. The second submission made on behalf of the accused, therefore, deserves to be rejected.

7. In find there is no merit in this revision petition. Hence, the same is hereby dismissed.

N. A. BRITTO, J.